

1 disability and disability insurance benefits under Title II of
2 the Social Security Act. Her claim was denied at all levels of
3 the process. The notice of the final ALJ decision stated that if
4 plaintiff wished to appeal further, she was required to file a
5 request for review with the Appeals Council within 60 days of her
6 receipt of the ALJ decision. The ALJ decision was mailed to
7 plaintiff on July 28, 2006. Plaintiff requested review of the
8 ALJ decision. On October 26, 2007, the Appeals Council denied
9 the request for review, stating that plaintiff had 60 days to
10 commence this civil action. Therefore, plaintiff had until
11 December 31, 2007, to commence this lawsuit.

12 Plaintiff commenced her lawsuit on January 3, 2008. The
13 Appeals Council stated that it is unaware of any request to
14 extend plaintiff's filing deadline, and plaintiff's complaint
15 does not state an explanation for why it was late.

16 Furthermore, On August 11, 2008, this court ordered
17 plaintiff to show cause why defendant's motion to dismiss should
18 not be allowed. Plaintiff failed to respond to the court's
19 order.

20 Standard

21 Judicial review of final decisions on claims arising under
22 Title II or Title XVI of the Social Security Act is provided for
23 and limited by sections 205(g) and (h) of the Act. 42 U.S.C. §§
24 405(g) and (h). The remedy provided by section 205(g) is
25 exclusive:

26 (g) Any individual, after any decision of the
27 Commissioner made after a hearing to which he was a
28 party, irrespective of the amount in controversy, may
obtain a review of such decision by a civil action
commenced within sixty days after the mailing to him of

1 notice of such decision or within such further time as
2 the Commissioner may allow. . . .

3 (h) The findings and decision of the Commissioner after
4 a hearing shall be binding upon all individuals who
5 were parties to such hearing. No findings of fact or
6 decision of the Commissioner shall be reviewed by any
7 person, tribunal, or governmental agency except as
8 herein provided. No action against the United States,
9 the Commissioner, or any officer or employee thereof
10 shall be brought under section 1331 or 1346 of Title 28
11 to recover on any claim arising under this subchapter.

12 There is no federal question jurisdiction for social security
13 disability benefits claims. Mathews v. Eldridge, 424 U.S. 323,
14 327 (1984).

15 Therefore, the only civil action permitted on plaintiff's
16 claim is one arising under the above-mentioned sections; such
17 action must be commenced within 60 days after the mailing to
18 plaintiff of the notice of the final decision of the commissioner
19 "or within such further time as the Commissioner may allow." The
20 Commissioner has interpreted "mailing" as the date of receipt by
21 the individual of the Appeals Council's notice of denial of a
22 request for review. 20 C.F.R. § 422.210©). The date of receipt
23 is presumed to be five days after the date of such notice, unless
24 there is a reasonable showing to the contrary made to the Appeals
25 Council. 20 C.F.R. §§ 404.901, 416.1401, 422.210©). Plaintiff
26 did not provide any explanation for her untimely filing of this
27 action. See also Banta v. Sullivan, 925 F.2d 343, 345-46 (9th
28 Cir. 1991) (stating that although the sixty-day time limit is not
jurisdictional, but is instead a statute of limitation which the
Secretary may waive, plaintiff pointed to no evidence of waiver;

1 plaintiff could not point to equities in favor of tolling the
2 limitations period that were so great that deference to the
3 agency's judgment was inappropriate) (quotation and internal
4 citation omitted).

5
6 Conclusion

7 Plaintiff has not presented evidence of any extraordinary
8 circumstances that would justify extending the 60-day period.
9 Moreover, plaintiff did not respond to the court's order to show
10 cause why she had not responded. For the foregoing reasons,
11 defendant's motion to dismiss is granted (#20).

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14 Dated this 11th day of September, 2008.

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18 THOMAS M. COFFIN
19 United States Magistrate Judge
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